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Press Release

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McGraw Asks Federal Court To Allow “Homestead Exemption” From Medicaid Estate Recovery

Attorney General Darrell McGraw has asked the United States Court of Appeals in Richmond, Virginia, to approve a proposed exemption that would allow homeowners to retain approximately \$50,000 of their home against Medicaid’s claims to recover the cost of their nursing home care. McGraw represents State Medicaid officials. Federal Medicaid officials denied their request to implement the exemption, and the Attorney General appealed to the Appeals Court. A panel of three Appeals Court judges also rejected the proposal, so the Attorney General is asking the entire Court to review it.

The controversy stems from the “estate recovery” law, passed by Congress in 1993, which required State Medicaid officials to recover from the estate of a Medicaid recipient any sums spent by Medicaid on “long term care” (generally, nursing home care). Medicaid won’t help pay for nursing home care until the individual has first consumed nearly all of his or her own resources and income, but has always allowed an exemption for the homestead. The estate recovery law removed that exemption after the homeowner died, although the home remains exempt as long as there is a surviving spouse.

McGraw’s “Petition for Rehearing,” to be filed March 5th, 2007, says that Federal law allows States to implement “undue hardship” waivers. According to the Petition, substantial numbers of West Virginians refuse to get long term care because they don’t want to lose their homesteads to Medicaid, creating “undue hardship” for the individual and family, “and making subsequent care even more involved and costly.” “if needy recipients knew they could retain and pass on to their heirs up to \$50,000 of the value of their homestead, that hardship would be greatly reduced while still allowing Medicaid to recover from properties worth more than the exempted amount,” the Petition said.

McGraw said:

The exemption would apply only to people who worked for their home, who paid all their taxes, and who did everything the Government asked of them. Some become frail in their final years and need help. Neither Medicare nor health insurance will pay for expensive nursing home care, and their savings and retirement incomes are quickly consumed. All we ask is that they be allowed to pass on some small portion of the heritage for which they worked so hard.

McGraw noted that, according to a “Policy Brief” prepared for Federal Medicaid officials in 2005, four States had still not implemented estate recovery, and Florida exempted the full value of all homesteads. None of said States have ever been penalized for their failure to comply with estate recovery.

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